

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.11.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2782 of 2008

1. Jaya
2. Dhinakaran
3. M.Chitra
4. M.Manjula
5. Narayanamoorthy
6. M.Vimala
7. M.Satyaraj

... Appellants/Applicants

Vs.

Union of India
Owning Southern Railway
rep. By General Manager
Park Town, Chennai - 3

...Respondent/Respondent

Civil Miscellaneous Appeal is filed under Section 23 of Railway Claims Tribunal Act 54 of 1997 to set aside the order dated 01.02.2008 passed by the Railway Claims Tribunal, Chennai Bench in O.A.No.2002-00042 of 2002 and to allow the appeal by granting an award for Rs.4,00,000/- with interest at 12% p.a. from the date of filing of claim petition viz., 12.04.2002 till the date of payment and costs of the proceedings.

For Appellants: Mr.T.Rajamohan

For Respondent: Mr.M.T.Arunan

J U D G M E N T

The present Civil Miscellaneous Appeal has been filed against the order dated 01.02.2008 passed by the Railway Claims Tribunal, Chennai Bench, wherein the appellants' claim was rejected.

2. The case of the appellants before the Tribunal [1st appellant is the wife of the deceased and others are son and daughters of the deceased] are that deceased, viz., M.Murugan

was working as Trackman in Southern Railway in the permanent way Section Engineer, Kancheepuram, died on 07.03.2001 and his body was found upline at Km 42/200-300. It was informed to the 1st appellant by some one stating that the deceased while travelling in Passenger No.158 from Kancheepuram, fallen down from running train at Kg.M.48/300 at Thirumalpur yard and died on the spot.

3. It is the further case of the appellants that in the inquest report of the police, it is stated that the deceased had moved from work spot Km42/300 and had been to the office of Section Engineer permanent way at Kancheepuram and on his return from Kancheepuram, deceased had fallen from the passenger train 158 near Thirumalpur railway station and he was a bonafide passenger, as such, the appellants pleaded for compensation.

4. A detailed counter was filed by the Railways before the Tribunal stating that the deceased died due to accidental fall from passenger train no.158 in Thirumalpur Yard on 07.03.2001 and the said deceased person was working as a Sr.Trackman under control of Section Engineer, P.Way, Kancheepuram in Gang Km.38/100 to 44/500 in between Kanchipuram and Thirumalpur Station of MAS Division. He was staying in the railway quarters no.TMLP 12 D of TMLP Station. As per the report of Section Engineer /P.Way Report, on 07.03.2001, the deceased, after completing his work at 17.00 hrs, in the track at Km.41/100-200 and after handing over tool at 42/000, left to his residence from the work spot I.e, 42/100. On the same day at 20.30 hrs, Section Engineer/P.way has received a message from Station Master /Thirumalpur, stating that a male body found lying on the track at Km48/300 Thirumalpur Yard Main Line identified as M.Murugan, gangman of Gang 7 of Section knocked out and killed by 158 Passenger train. Further the Station Master, Thirumalpur in his statement has stated that after dispatching of 158 UP passenger train at 17.06 hrs, on intimation of public, he has visited the accident spot and identified the body as Murugan of 7 Gang of Section Engineer /P.Way, Kancheepuram and the body was lying in the middle of the track and there was severe injury on the head and no valuables on the body and no authority or pass or no identity card and no journey ticket was available. At that time, the deceased was wearing violet colour checked lungi and light violet colour full hand shirt. It is further stated that if the deceased was returning from the work place, as alleged, he might be in uniform, which is usually worn by the trackman.

5. Taking Shelter of the inquest report, the respondent would submit that the body was lying in the middle of the railway track nearer to the Thirumalpur Railway Station Upline 48/200-300 mainline, the head was on the south side and the legs

were on the northern side of the track and the body has not been dragged in the track. The position of the body itself reveals that the cause of death was not due to accidental fall from the train, but it is purely a suicidal death. The respondent would further submit that if the deceased had actually fallen from the speedy train, the body would have been thrown out either left or right side of the line and the body would have dragged on the line, but the head of the deceased was found on the southern side and legs on the northern side of the track. It is evident to note that the deceased might have been committed suicide by keeping his body in between line.

6. Further, the inquest report reveals that a person, who saw the deceased before his death was one Kumar, who is Gangmate on 7th Gang, in his statement submitted that the deceased Murugan was working with him from 07.00 hrs to 17.00 hrs on 07.03.2001 and after completion of work, he handed over the tools and informed that he is leaving for home and next day morning only, he came to know the demise of the said deceased and saw the dead body and had deposed that he has not seen personally, the deceased boarding the train, which is contrary and hence the respondent submitted that the inquest report is not at all reliable one.

7. Also, the reply statement of the respondent proceeds to state that the deceased was the owner of II Class Privilege Pass No.757181 and the same was issued by the Section Engineer/P.Way/Kancheepuram on 22.11.2000 for journey from Kanyakumari to Ohka via TRJ CGL, MS, MAS, AJJ, SBC, GTL valid up to 21.03.2001, but the same does not cover Kancheepuram and Thirumalpur and break journey and the points Kancheepuram and Thirumalpur are not mentioned in the Privilege pass. The Station Master, Thirumalpur in his statement clearly mentioned about the non-availability of privilege pass from the deceased and hence the deceased person was not at all a bonafide passenger, therefore, pleaded that they are not liable to pay any compensation, as per Railway Act and sought dismissal of the claim petition.

8. The Tribunal has considered the aspects and had passed an order rejecting the claim filed by the appellants' herein. While denying the claim issue, it has been observed that if the deceased was returning from work place as alleged, he might be in his uniform, which is usually worn by the track man and he was found wearing lungi. The inquest report reveals that the body is in the middle of railway track nearer to the Thirumalpur R.S.Upline 48/200-300 main line, head was on the south side and the legs were on the northern side of the track and the body was not dragged in the track and from the position of the body, the

cause of death was not due to accidental fall from the train, but it is purely a suicidal death and if the deceased had actually fallen from a speedy train, the body would have been thrown out either left or right side of the line and the body would have been dragged on the line, therefore, the Tribunal held that the deceased might have committed suicide by keeping his body in between the line and therefore stated that the respondent/Railway is not liable to pay any compensation.

9. Further, the Tribunal from the details of incident recorded both in the documents submitted by the appellants as well as from the details furnished by the respondent in the reply statement, concluded that the deceased would not have fallen from the train because of the very fact that the body was found in the middle of the railway track, which was supported by the statement of the Station Master, Thirumalpur, wherein the said authority had stated that he visited the accident spot and identified the body of the deceased and that the body was lying in the middle of the track with severe injury on the head and the same would clearly suggest that the deceased would not have fallen from a running train, because a fall from a running train would lead to number of injuries over different parts of the body. The Tribunal further proceed to state that though the respondent has not let in any evidence, as the initial onus always lies upon the claimants / appellants and not on the respondent to prove their case, thereby held that the appellants have not proved that the deceased Murugan died on 07.03.2001 in an untoward incident, while travelling by train No.158 Passenger.

10. The other point, viz., the deceased did not have the authority, pass or ticket journey available with the deceased, in other words, it is the contention of the respondent that the deceased was not a bonafide passenger, the Tribunal had observed that the appellants have stated in the application that the deceased was in possession of second class privilege pass. In support of the same, Ex.A.5 has been filed. The Tribunal by going through Ex.A.5, stated that the pass is from Kanyakumari to Okha and the route for which the pass has been issued does not cover Kancheepuram-Thirumalpur breaking point / Chengalpattu route section, on which the incident had taken place. Moreover, taking into the account the fact that only three privilege passes were issued for Non-gazetted staff in a year, no employee would use a pass for travel of less than 100 Kms that too by a passenger train, as has happened in the present case. Although the learned counsel for the appellants therein mentioned that the deceased was on duty when the incident took place, the documentary evidence is to the contrary. The Senior Engineer / P.Way had reported on 07.03.2001 that the deceased after completion of his work at 17.00 hrs and after handing over the

tools, left for his residence from the work spot, which in the other words means that the deceased was not on duty when the incident took place. Citing all the above reasons, the Tribunal held that the appellants are not entitled to any relief and dismissed the said petition.

11. Aggrieved against the dismissal award passed by the Tribunal, the appellants have come up with this appeal.

12. Heard the learned counsel on either side and perused the documents placed on record.

13. On the side of the claimants, 1st appellant/wife of the deceased /A.W.1 was examined as witness and since she was not the eye-witness, another person, namely, one S.Deivasigamani/A.W.2, who also gangmate was examined. In the proof affidavit, he has stated that he met the deceased on the platform of Kancheepuram Railway Station in the evening of 07.03.2001 and enquired him as to why he was present there. The deceased had informed him that he had come to Kancheepuram to meet his superior, Section Engineer, Permanent Way and that he is returning after meeting his officer. Both of them travelled in the same compartment in No.158 Train Passenger. When the train has approached Tiumalpur Yard, the deceased person moved to the doorway ready to get down. At that time, there was jerk and jolt of the train, as it was proceeding in the yard and he saw the deceased had accidentally fallen down from the moving train. Immediately after reaching Tirumalpur, he has told the co-passengers to inform the matter to the Station Master and he had proceeded to the spot where Murugan had fallen. Within a short time, the Station Master, Tirumalpur has also reached the spot and identified Murugan and he informed to the wife of deceased about the incident and inquest was conducted on 08.03.2001 and he was also present and signed as 5th Panchayatar.

14. In the cross-examination of the said S.Deivasigamani/A.W.2, it is seen that the deceased was found near Palanalli in Tirumalpur Yard. He has stated that he did not seen him purchase ticket, but he knew that the deceased was a railway employee. He further proceeded to state that there was no need for him to pull the chain, because the train is approaching the yard and he did not make any complaint to Station Master or R.P.F., or Police and that he informed somebody working in railways. He stated that the deceased was not his relative and as he saw the incident, happen, he had given evidence, further he denied the suggestion that he is giving false evidence.

15. The contention of the appellants is that the deceased was a bonafide passenger issued with Second class ticket and it is the untoward incident of fall from train, which was witnessed by his fellowmen, who has given evidence, but the tribunal failed to take note of the same and in columns 15 and 22 of the inquest report, it is confirmed by the investigating officer that the deceased had fallen from train no.158, suffered grievous head injuries and died due to heavy discharge of blood. Further, when there was no contra evidence produced by the Railways, the Tribunal ought to have allowed the petition and awarded compensation. There was no cross examination conducted by the Railway Department against the evidence given by the said person, viz., Deivasigamani, who was also fellowmen, travelled along with the said deceased person. When the appellants have produced proof of a person who had travelled along with the deceased and he also gave evidence, respondent - Railways has not produced any contra evidence. Also the 2nd class privilege pass was issued to show that the deceased was a bonafide passenger was not taken into account by the Tribunal.

16. The evidence given by the said Deivasigamani stating that he met deceased in Kancheepuram Railway station where he has stated that he has come to see his higher official, no contra evidence has been produced by the respondent to deny the said statement that the deceased Murugan has not met the said Section Officer.

17. When a gangmate namely, Kumar has given a report that deceased Murugan was a 7th Gang of Section Engineer, P.Way, Kanchipuram has worked for 7 hrs to 17 hrs on 07.03.2001 and after of work, he had handed over tools and informed that he was leaving home, the said Kumar, who is a co-gangman worked on that day, came to know that the said Murugan died on the next day, had given statement, but the said Kumar was not examined by the Railway Authorities.

18. Admittedly, the petitioner is a 2nd class privilege pass holder, stating that he ought not to have used the said privilege pass for such a short distance is of no valid presumption. Whether, the deceased has used the pass or not can be stated only by examining train 158 passenger ticket checker and the statement that he has been wearing violet colour checked lungi and light violet colour full hand shirt is not his uniform and coming to the conclusion that he was not going back from his work, is not a genuine reason because changing of a uniform, while meeting the section officer cannot be found fault with in such a way that he was not in uniform while returning to home.

19. Regarding Accidental Falling of a body from a train is concerned, a person falling from a train on many occasions is not always to be dragged out, on many occasions, persons, who are falling down from train, had gone into the track and there is no proper evidence produced by the authorities to prove that it was a suicidal death.

20. With regard to the statement that there was no materials produced to show who had informed the station master regarding the accidental death, it is clear that on intimation of public, the Station Master had rushed to the place of occurrence and it proves the statement of witness, Deivasigamani, who had informed the co-passengers to pass on the message about the incident to the station master and there is a link between the two statements. Based on the public information, he had visited the spot and the denial of compensation on the ground that the deceased was not wearing uniform and no valid ticket produced, cannot be a reason for denying the same. The Tribunal has not considered the evidence let in by witness who had travelled along with him and non-examination of other proper witness by Railways is also fatal to the case.

21. For all the above said reasons, this Court is of the view that the appellants are entitled for compensation. Accordingly, the present C.M.A. is allowed and the order passed by the Railway Claims Tribunal in O.A.No.2002/00042 of 2002 dated 01.02.2008 is set aside. The respondent is directed to deposit a sum of Rs.8,00,000/- along with interest at the rate of 6% per annum from the date of petition till the date of realisation within a period of four weeks from the date of receipt of a copy of this order and on such deposit being made, the 1st appellant, being wife of the deceased is entitled to half share of the compensation amount and the remaining half share of the amount shall be shared equally between the appellants 2 to 6. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssd
To

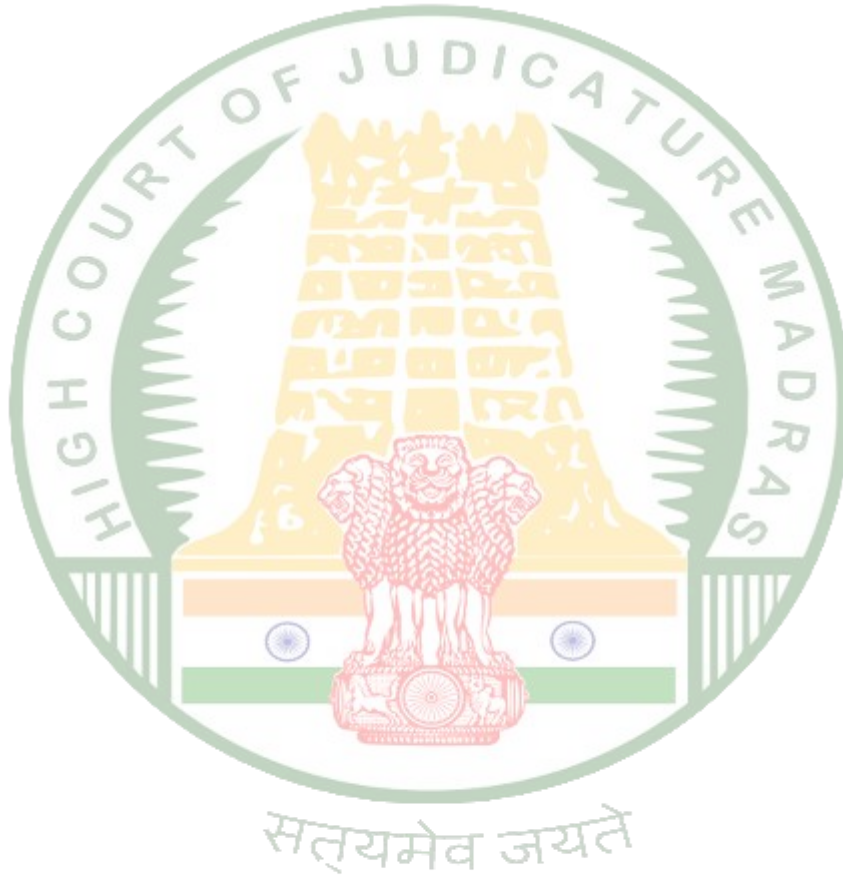
1.The General Manager,
Union of India
Owning Southern Railway
Park Town, Chennai - 3

Copy to:
The Section Officer,
VR Section,
Madras High Court,
Chennai.

+2cc to M/s.T.Rajamohan, Advocate SR.95219
+1cc to M/s.M.T.Arunan, Advocate SR.95013

C.M.A.No.2782 of 2008

CP(CO)
CB(12/03/2020)



WEB COPY